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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,554	07/26/2005	Wolfram Eichner	14503-016US1 F63105PCUS	7146
26191 7590 05/13/2008 FISH & RICHARDSON P.C. PO BOX 1022 MINNEAPOLIS, MN 55440-1022				
EXAMINER				
WHITE, EVERETT NMN				
ART UNIT		PAPER NUMBER		
1623				
MAIL DATE		DELIVERY MODE		
05/13/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/527,554

**Applicant(s)**

EICHNER ET AL.

**Examiner**

EVERETT WHITE

**Art Unit**

1623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE-08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_

## **DETAILED ACTION**

### ***Foreign Priority Claimed***

1. This application is a 371 of PCT/EP03/09750 International Filing Date: September 11, 2003 published in German, which claims foreign priority to Germany 10242076.9 under 35 U.S.C. 119(a)-(d). It is noted that PCT/EP03/09750 and Germany 10242076.9 (September 11, 2002) are in German, no translation into English.

### ***Specification***

2. The disclosure is objected to because of the following informalities: A Brief Description of the Several Views of the Drawing(s) is missing. See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74 is required

Appropriate correction is required.

### ***Drawings***

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "Fig. 3" has been used to designate both "NH<sub>2</sub> and CHO/COOH coupling reactions" and "SH coupling reactions". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-15 provide for the use of a conjugate of hydroxyalkylstarch and an allergen, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

In Claim 8, the phrases "the polypeptide chain" and "the saccharide chains of the glycoprotein" lack clear antecedent basis by being dependent from Claim 1 since these phrases were not previously recited in Claim 1. Claim 8 may have been intended to be dependent from Claim 6 and/or Claim 7.

In Claim 10, the phrase "the specific immunotherapy" lacks clear antecedent basis by being dependent from Claim 1 since this phrase was not previously recited in Claim 1.

In Claim 11, the phrase "the therapy" lacks clear antecedent basis by being dependent from Claim 1 since this phrase was not previously recited in Claim 1.

In Claim 11, the metes and bounds of the phrase "other types of clinically relevant reactions to immediate-type allergens" cannot be determined since the specific type of reactions to immediate-type allergens the claim is in reference to has not been disclosed.

In Claim 12, recitation of the term "administration" lacks clear antecedent basis by being dependent from Claim 1 since Claim 1 does not indicate that a substance was administered. Also, to what or whom would a substance be administered?

In Claims 13 and 14, the phrase "where the immunotherapy" lacks clear antecedent basis by being dependent from Claim 1 since "an immunotherapy" was not previously indicated in Claim 1.

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Claims 1-15 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

***Summary***

6. All the pending claims (Claims 1-15) are rejected.

***Examiner's Telephone Number, Fax Number, and Other Information***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Everett White whose telephone number is 571-272-0660. The examiner can normally be reached on 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shaojia A. Jiang can be reached on 571-272-0627. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Everett White/  
Examiner  
Art Unit 1623

/Shaojia Anna Jiang, Ph.D./  
Supervisory Patent Examiner, Art Unit 1623